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GREGORY M DOUDNIKOFF
IBM CORP IP LAW DEPT T81 B062
3039 CORNWALLIS ROAD
P O BOX 12195
RESEARCH TRIANGLE PARK NC 27709-2195

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OFFICE OF PETITIONS

In re Application of :
Flenley, et al. : DECISION ON PETITION
Application No. 09/209,124 :
Filed: December 10, 1998 :
Atty. Dkt. No.: UK9-98-048 :

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed April 13, 2006.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED AS UNTIMELY.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned November 30, 2000 for failure to timely submit a proper reply to the Notice of Allowance and Issue Fee Due (Notice) mailed August 29, 2000. The Notice set a three month statutory period of time for reply. Notice of Abandonment was mailed March 23, 2001.

Petitioners allege that a reply to the Notice was timely filed November 27, 2000 and have provided supporting documentation in support thereof.

In accordance with 37 CFR 1.181(f), any petition under 37 CFR 1.181 "not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable."

The Notice of Abandonment was mailed March 23, 2001. The instant petition was filed April 13, 2006, more than five years after the Notice of Abandonment was mailed. Petitioners, however,

provide no explanation for the delay in the submission of the petition.

In view thereof, the petition is deemed untimely submitted.

Any renewed petition must be accompanied by a detailed explanation of the delay in submission of the petition to withdraw the holding of abandonment.

ALTERNATE VENUE

Petitioners may wish to consider filing a petition stating that the delay was unintentional. Petitioners' attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b). The Director may require additional information where there is a question whether the delay was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile:

(571) 273-8300

By hand delivery:

U.S. Patent and Trademark Office
Customer Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

A handwritten signature in black ink, appearing to read 'Alesia M. Brown', is written over the typed name.

Alesia M. Brown
Petitions Attorney
Office of Petitions